

March 2, 2012

MDEQ  
420 Fifth Street  
Gwinn, MI 49841

**RE: Public Hearing 11-52-0075-P Comment (Marquette County Road 595)**

To Whom It May Concern:

As both a citizen of Michigan and a Keweenaw Bay Indian Community Tribal Member with reserved usufructuary treaty rights under the Treaty of 1842 that encompasses present-day Marquette County, I strongly oppose proposed Marquette County Road 595 for the following reasons:

**1. The project purpose is misleading and inaccurate.**

Proposed County Road 595 (CR 595), although applied for by the Marquette County Road Commission (MCRC), has been designed by, and would primarily be funded and used by, Kennecott Minerals (a wholly-owned subsidiary of Rio Tinto) as part of the company's Eagle Mine and Humboldt Mill project.

In the CR 595 application, the stated purpose for the road is described as:

"....to construct a primary county north-south road that 1) connects and improves emergency, commercial, industrial and recreational access to a somewhat isolated but key industrial, commercial and recreational area in northwest Marquette County to US-41; and 2) reduces truck travel from this area through Marquette County population centers."

However, the reality is that CR 595 is a mining haul road that would immediately service Kennecott's Eagle Mine and Humboldt Mill. There is no previously documented public need for this road for either safety, emergency, recreation or other reasons. On the other hand, Kennecott's Eagle Mine permit application demonstrates that they considered the possibility of a south haul route as far back as 2006.

The proposed route begins precisely at Kennecott's Humboldt milling facility and ends at Kennecott's Eagle Mine. Kennecott has planned for the road largely designed from its previous Woodland Road application. Kennecott would pay almost entirely to build the road, and has invested over \$8 million in the project thus far. And, Kennecott would undoubtedly be the primary user and beneficiary of this road.

**2. Native American Treaty Rights**

The Keweenaw Bay Indian Community, Lac Vieux Desert Band of Lake Superior Chippewa, among other tribes, along with their members, retained in the 1842 Treaty with the Chippewa their inherent right to hunt, fish, trap and gather in, on and over lands and waters that were ceded to the United States under the Treaty. The proposed CR 595 is within this ceded territory.

Large scale developments to the land and natural environment within the ceded territory pose a considerable threat to treaty and cultural resources still used by tribal members, including myself and my family, today. Such resources include plants such as the White Cedar, medicinal roots, berries, and harvestable wildlife such as deer and fish.

In 1993, the Great Lakes Indian Fish & Wildlife Commission (GLIFWC) published “Plants Used by the Great Lakes Ojibwa” which provides detailed data and information about traditional plant use and occurrence in the northern Great Lakes region, including within the proposed CR 595 project area. Many of these plants, used as traditional foods and medicines, occur specifically in wet areas and wetlands. These plants are an essential part of my life-way and the life-ways of the Ojibwa people, and rights to access, harvest and use these resources are protected through treaty reserved usufructory rights within the project area. Continued degradation and destruction of these resources without my community's Free, Prior, and Informed Consent further violates international human rights principles (UN Declaration on the Rights of Indigenous Peoples) and threatens our culture and survival as a people.

### **3. EPA Concerns Remain**

Federal concerns with the original Woodland Road application still remain. In March 2010, the U.S. Environmental Protection Agency (EPA), along with the U.S. Army Corps of Engineers (USACE) and U.S. Fish & Wildlife Service (USFWS), informed the Michigan Department of Natural Resources and Environment (now the Department of Environmental Quality) that it must require Kennecott to address a number of serious deficiencies in its permit application and obtain a Section 404 Clean Water Act permit for its ore hauling project, then called “Woodland Road.”

Instead of addressing these concerns, Kennecott withdrew its application. In September 2010, the Woodland Road ore hauling plan was revived and re-branded as a public-private partnership under a new name: Marquette County Road 595.

Despite the new name and surrogate of the Marquette County Road Commission, many of EPA's primary objections to Kennecott's original mining haul road application are still relevant to the 595 application, including (1) inaccurate/misleading project purpose, (2) insufficient consideration of alternative routes, (3) likelihood that 595 would lead to additional development, (4) holistic view of entire project required under federal law, and (5) need for a Section 404 Clean Water Act permit from the USACE.

The EPA stated that “if the same road is proposed, it would most likely receive a federal objection based on the same factors that determined the Woodland Road response.” This should remain regardless of what entity files the application.

#### **4. Dangerous Precedent**

Allowing Marquette County to apply for Kennecott’s new mine road sets a dangerous precedent for other similar industrial projects. The piecemeal application process of Kennecott’s mining project has thus far been able to proceed with limited federal oversight, and hence limited federal trust responsibilities to affected tribes including treaty obligations.

Multiple communications demonstrate that 595 is intended to be Kennecott’s road. Kennecott has pledged up to \$500,000 to support the permitting of 595, by both managing and supervising the process. In August of 2011, Kennecott Eagle Minerals President Adam Burley sent an email to the road commissioners requesting they organize closed-door transportation advisory panel meetings composed of representatives from Kennecott, the MCRC and other governmental officials, in order to work in partnership to ensure alignment of effort, communication, and advice on appropriate actions and strategies.

Allowing such deviously planned industrial mining projects of this scale to proceed simply because Kennecott has found a public partner sets a dangerous precedent for other similar industrial projects that significantly degrade and destroy area ecosystems and water quality. Kennecott must be required to pursue permits for its project on its own, as is required with all other aspects of its mining plan intended for individual private for-profit use.

#### **5. Impacts to Wetlands & the Environment**

CR 595 would cause unacceptable destruction and degradation to aquatic and terrestrial ecosystems, pollute and degrade the waters of the Yellow Dog Plains, Michigamme Highlands and the Mulligan Plains. Hence, CR 595 would negatively impact treaty reserved rights of Ojibwa tribes signatory of the Treaty of 1842, and should be denied. 595 would directly affect about 25 acres of wetlands and indirectly affect many acres of land outside of the road’s immediate footprint.

The applicant has failed to show, as required by the laws of Michigan, that construction and operation of CR 595 “...will not pollute, impair or destroy the air, water or other natural resources or the public trust in those resources....”. The MDEQ must not grant a permit if the proposed project or structure will result in significant degradation and destruction of aquatic ecosystems, waters, and associated natural resources.

The proposed project would result in changes in runoff patterns, alter stream hydrology, and would likely increase peak flows of streams within the project area, many of which discharge to the Silver Lake basin. Increased storm-water and snowmelt runoff, changes in watershed storage

capacity, and alteration of hydrology will result. There is abundant evidence that the construction of new roads causes changes in runoff, hydrology, and peak flows within a watershed. Roads change the hydrology of a watershed by altering surface water flow and causing changes in runoff patterns.

Furthermore, the applicant fails to acknowledge likely contaminant introductions to the area environment through use of CR 595 for hauling metallic sulfide ores from the Kennecott Eagle Mine.

Nearly seventy-five percent of the original wetland area of Michigan (over 11 million acres) has already been destroyed. The number of acres of directly impacted wetlands in the 595 application is approximately 1.5 less than for the Woodland Road -- which was rejected largely due to unacceptable levels of wetlands impact. Although the applicant proposes to mitigate wetland impacts by rebuilding new ones, such wetlands mitigation is known to have a high rate of failure.

## **6. Alternative Analysis**

The CR 595 application does not adequately consider alternative hauling routes nor routes to achieve MCRC's generally stated purposes. In fact, a number of existing options other than 595 could provide faster emergency access, reduce impacts on water resources, avoid major population centers, and still serve the needs of industry.

The introductory language to the applicant's project purpose presumes the need for an entirely new road to be "constructed," rather than achieving the same stated ends by enhancing viable existing routes. Yet, upgrades to current county approved trucking routes will improve access to northwest Marquette County and better serve the public with fewer adverse environmental impacts. Updating Kennecott's permitted haul route (AAA-510-550) and continuing to use other existing roads would result in wetland impacts of only about one acre. Additionally, the original road-rail route described in Kennecott's Eagle Mine application (prior to amendment) are not considered in the application.

Until alternatives are adequately and fully considered, CR 595 should be denied.

## **7. Cumulative Effects**

There has been no cumulative impacts study involving the Kennecott Eagle Mine, Haul Route and Humboldt Mill. As the Army Corps stated in their analysis of the Woodland Road application, "If the road is required to connect the proposed nickel mine at Eagle Rock with the milling operation and tailings disposal facility at Humboldt, these actions should be evaluated under one project."

The undeniable true primary purpose for the road is to connect Kennecott's operations between the Eagle Mine and Humboldt Mill. Thus, these collective mining actions must be evaluated

under one project. There should be a federal Environmental Impact Statement that encompasses the cumulative impacts of the mine, road and mill, despite separate state permits that have advanced thus far. Cumulative effects from Kennecott's mining activities will disproportionately negatively impact the Ojibwa people who depend on the reserved treaty resources of the project area.

Furthermore, secondary impacts of additional road-building and land-use alteration associated with 595 have not been evaluated. Local officials and legislators are intent on opening up the area for industrial development, particularly mining. The potential for additional road construction and associated industrial activities must be considered as part of the cumulative and anticipated activities in the watershed. Such activities can more appropriately and properly be considered in a mining permit amendment that Kennecott should be obligated to submit due to changes in their transportation plans for the Eagle Mine.

Please feel free to contact me at **Ex. 6 - Privacy** or **Ex. 6 - Privacy** if you have any questions.

Respectfully,

Jessica L. Koski

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cc:

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